

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT MATHIEU)	
Claimant)	
VS.)	
)	Docket No. 225,559
DISCOVERY ZONE)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing order dated September 12, 1997, entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge found claimant injured his shoulder as the result of an accident which arose out of and in the course of claimant's employment with respondent. Respondent and its insurance carrier requested the Appeals Board to review that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The Appeals Board has the jurisdiction and authority to review preliminary hearing findings of whether an accident arose out of and in the course of employment. See K.S.A. 44-534a, as amended.

The Appeals Board finds claimant's May 12, 1997, accident did not arise out of and in the course of his employment with respondent. At the time of the accident, claimant had clocked out at respondent's request and had elected to stay on respondent's premises to play with a specific group of children. While playing with those children, claimant fell from some playground equipment and injured his shoulder.

The evidence is clear that at the time of the accident claimant was engaged in personal endeavors and no longer performing duties in furtherance of respondent's business activities. The accident did not occur while claimant was at work in the employer's service. As such, claimant's accident neither arose out of nor in the course of his employment with respondent. For a recent discussion of the phrases "arising out of" and "in the course of" see Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

Claimant argues the "going and coming rule" set forth in K.S.A. 44-508(f) mandates the finding that claimant's accident arose out of and in the course of his employment because he had not left the respondent's premises. The Appeals Board disagrees. K.S.A. 44-508(f) is a codification of the long-standing rule which provides that injuries occurring while traveling to and from employment are generally not compensable. Had claimant's injury occurred while he was leaving the premises at the end of the workday, the "going and coming rule" would be applicable. However, that is not the case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order dated September 12, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, reversed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Maureen T. Shine, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director